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Workshop

European Citizenship and Equality: A Citizenship of Unequals by Law?



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General outline

The workshop will cover the legal-political essence of the notion of European citizenship and concentrate on the practical use of the rights associated with it by the citizens of the Union. A special focus will be on the role played by citizenship in the context of the new non-discrimination law developments in the EU and, especially, the outline of the possible future developments of the EU non-discrimination legislation.

What is European citizenship? How different is it from the nationalities of the Member States? What is its practical use as a source of rights for European citizens? Does it contribute to the gap existing between the rights of those who are and who are not in possession of a nationality of one of the Member States? What is EU citizenship's ultimate effect on the nationality of the Member States? How does it contribute to the shaping of the idea of equality among all Europeans?

From discussing the specificity of the concept of European citizenship we will move towards the rights of the European citizens under the EC Treaty and secondary legislation focusing on non-discrimination rights. A particular emphasis will lie on the non-discrimination on the basis of nationality and gender/sex discrimination. Both areas are likely to see rapid developments in the nearest future which the participants of the workshop will be invited to anticipate.

The workshop is mostly built around the legal sources, rather than secondary literature, focusing on the critical assessment of the case-law of the European Court of Justice (ECJ) and other relevant courts, shedding light on the meaning of citizenship and equality in the European Union, as well as the relevant Secondary law. The ultimate aim of the work shop is to tackle the tandem of legal concepts – citizenship and equality – using the law itself as the main source for analysis.

The students will gain the skills of working with the case-law of the European Court of Justice and will critically analyse the legal developments in the most dynamic areas of European law. Having basic background in European law/policy is an asset for those who will attend the seminar, although it is not required.

Workshop structure and basic requirements

All the students are expected to read *all* the case-law and legislation assigned for every class to be able to analyse the arguments used by the Court in every case and have a clear idea of the issue of every case. Those interested in learning more about the legal developments in the fields of EU citizenship and equality law are also invited to read the academic articles put on the additional reading list. Every session of the workshop will consist of the discussion of the main legal developments stemming from the cases and legislation read in advance.

Besides the cases and legislation to be discussed in class (all available for free download at the EurLex portal), students are expected to have on them the latest consolidated versions of the EU and EC Treaties (also available at EurLex). Active participation and the knowledge of the assigned materials are required. Given the amount of reading students are expected to start the preparation to the workshop well in advance. Final assessment is made based on a five-pages-long paper providing a critical analysis of one of the cases or pieces of legislation which we discussed in class.

Detailed workshop plan

DAY 1. SESSION 1: THE *IUS TRACTUM* NATURE OF EUROPEAN CITIZENSHIP

a). European citizenship and nationality of the Member States

International Court of Justice *Nottebohm* (1955) ICJ Reports 4;
European Court of Human Rights (ECt.HR) *Beldjoudi v. France* [1992] Appl. No. 12083/86;
ECt.HR *Moustaquim v. Belgium* [1991] Appl. No. 12313/86;
ECt.HR *Kafkasli v. Turkey* [1995] App. No. 21106/92;
Case C-369/90 *Mario Vicente Micheletti et al. v. Delegación del Gobierno en Cantabria* [1992] ECR I-4239;
Opinion of Tesauro AG in Case C-369/90 *Micheletti* [1992] ECR I-4239;
Case C-192/99 *R. v. Secretary of State for the Home department ex parte Manjit Kaur* [2001] I-1237;
Case 21/74 *Jeanne Airola v. Commission* [1975] ECR 221 ;
Case 37/74 *Chantal Van den Broeck v. Commission* [1975] ECR 235.

b). Citizenship and *ratione materiae* of Community law

Joined cases C-35/82 *Elestina Esselina Christina Morson v. State of the Netherlands and Head of the Plaatselijke Politie within the meaning of the Vreemdelingenwet* and C-36/82 *Szweradje Jhanjan v. The Netherlands* [1982] ECR 3723;
Case C-332/90 *Volker Steen v. Deutsche Bundespost* [1992] ECR I-341;
Case C-403/03 *Egon Schempp v. Finanzamt München V* [2005] ECR I-6421;
C-60/00 *Mary Carpenter v. Secretary of State for the Home Department* [2002] ECR I-6279

c). Citizenship and *ratione loci* of Community law

Case C-300/04 *M.G. Eman and O.B. Sevinger v. College van burgemeester en wethouders van Den Haag* [2006] ECR I-8055;
Case C-171/96 *Rui Alberto Pereira Roque v. His Excellency the Lieutenant Governor of Jersey* [1998] I-4607;
Joined cases C-100 and 101/89 *Peter Kaefér and Andréa Procacci v. France* [1990] ECR I-4647.

d). Citizenship rights vs. nationality-related obligations

Case C-376/89 *Panagiotis Giagounidis v. Stadt Reutlingen* [1991] ECR I-1069.

DAY 1. SESSION 2: EARLY CITIZENSHIP-RIGHTS DEVELOPMENTS

a). Pre-citizenship developments relevant for citizenship rights

Case 186/87 *Ian William Cowan v. Tesor Public* [1989] ECR 195;

Case 293/83 *Françoise Gravier v. City of Liège* [1985] ECR 593.

b). Advocates' General optimism with regard to citizenship

Opinion of AG Jacobs in Case C-168/91 *Christos Konstantinidis v. Stadt Altensteig* [1993] I-1191;

Opinion of AG Leger in Case C-214/94 *Ingrid Boukhalfa v. Germany* [1996] ECR I-2253

c). Citizenship vs. free movement of services in the mutation of the scope *ratione materiae* of Community law

Case C-193/94 *Criminal proceedings against Sofia Skanavi and Konstantin*

Chrysanthakopoulos [1996] ECR I-929;

Joined Cases C-4 and 5/95 *Fritz Stöber and José Manuel Piosa Pereira v. Bundesanstalt für Arbeit* [1997] ECR I-511;

Case C-85/96 *María Martínez Sala v. Freistaat Bayern* [1998] ECR I-2691;

Case C-348/96 *Criminal proceedings against Donatella Calfa* [1999] ECR I-11;

C-60/00 *Mary Carpenter v. Secretary of State for the Home Department* [2002] ECR I-6279.

d). Citizens' free movement

Directive 2004/38 *Official Journal* L 158 of 30 April 2004;

Case C-408/03 *Commission v. Belgium* [2006] ECR I-2647;

Case 48/75 *Jean Noël Royer* [1976] ECR 497;

Joined cases C-482 and 493/01 *Georgios Orfanopoulos et al. and Raffaele Oliveri v. Land Baden-Württemberg* [2004] ECR I-5257;

Case 149/79 *Commission v. Belgium* [1981] ECR 3881.

DAY 2. SESSION 1: LATEST DEVELOPMENTS IN THE FIELD OF EU CITIZENSHIP

a). Critical assessment of the limitations inherent in the *ius tractum* nature of European Citizenship

Case C-456/02 *Michel Trojani v. Centre publique de l'aide sociale de Bruxelles (CPAS)* [2004] ECR I-7573.

b). Latest citizenship case-law of the ECJ

Case C-274/96, *Criminal proceedings against H. O. Bickel and U. Franz*, [1998] ECR I-7637;

Case C-224/98 *Marie-Nathalie D'Hoop v. Office national d'emploi* [2002] ECR I-1691

Case C-184/99 *Rudy Grzelczyk v. le Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* [2001] ECR I-6193;

Case C-413/99 *Baumbast and R. v. Secretary of State for Employment* [2002] ECR I-7091;

Case C-200/02 *Kunqian Catherine Zhu and Man Lavette Chen v. Secretary of State for the Home Department* [2004] ECR I-9925;

Case C-148/02 *Carlos Garcia Avello v. Belgium* [2003] ECR I-11613;

Case C-138/02 *Brian Francis Collins v. Secretary of State for Work and Pensions* [2004] ECR I-2703;

Case C-209/03 *R. (on the application of Danny Bidar) v. London Borough of Ealing, Secretary of State for Education and Skills* [2005] ECR I-2119;

Opinion of AG Jacobs in Case C-148/02 *Garcia Avello* [2003] ECR I-11613;

Opinion of AG Geelhoed in Case C-209/03 *Bidar* [2005] ECR I-2119;

Opinion of AG Jacobs in Case C-96/04 *Standesamt Stadt Niebüll* [2006] ECR I-3561.

c). Focus on political representation

ECt.HR *Hirst v. UK (No. 2)* [2005] Appl. No. 74025/01
European Commission of Human Rights (EComm.HR) *X. v. UK* [1979] App. No. 7730/76 and [1976] App. No. 7566/76
Directive 94/80/EC, *OJ* L368/38, 1994
Directive 93/109, *OJ* L329/34, 1993
ECt.HR *Matthews v. UK* [1999] App. No. 40302/98
Case C-145/04 *Spain v. UK* [2006] ECR I-7917
Case C-300/04 *M.G. Eman and O.B. Sevinger v. College van burgemeester en wethouders van Den Haag* [2006] ECR I-8055;

DAY 2. SESSION 2: PERSONAL STATUS AND NON-DISCRIMINATION ON THE BASIS OF NATIONALITY

a). Directive on Third-country nationals who are long-term residents

Directive 2003/109/EC *Official Journal* L 16/44 of 23 January 2004.

b). ECJ's case-law on the interpretation of Article 39 EC

Case 75/63 *Mrs M.K.H. Hoekstra (née Unger) v. Bestuur der Bedrijfsvereniging voor Detailhandel en Ambachten* [1964] ECR 177;
Case 61/65 *G. Vaassen-Göbbels (a widow) v. Management of the Beambtenfonds voor het Mijnbedrijf* [1966] ECR 261;
Case 44/65 *Singer* [1965] ECR 965;
Case 66/85 *Deborah Lawrie-Blum v. Land Baden-Württemberg* [1986] ECR 2121.

c). ECJ's case-law on the interpretation of Article 12 EC

Case C-230/97 *Criminal proceedings against Ibiyinka Awoyemi* [1998] ECR I-6781;
Case C-147/91 *Criminal proceedings against Michele Ferrer Laderer* [1992] I-4097;
Joined cases C-64 and 65/96 *Land Nordrhein-Westfalen v. Kari Uecker and Vera Jacquet* [1997] ECR I-3171;
Case 12/86 *Meryem Demirel v. Stadt Schwäbisch Gmünd* [1987] ECR 3719.

DAY 3. SESSION 1A: NON-DISCRIMINATION ON THE BASIS OF SEXUAL ORIENTATION

a). ECJ case-law

Case C-249/96 *Lisa Jacqueline Grant v. South-West Trains Ltd.* [1998] ECR I-621;
Cases C-122/99P & C-125/99P *D & Sweden v. Council* [2001] ECR I-4319;
Case C-423/04 *Sarah Margaret Richards v. Secretary of State for Work and Pensions* [2006] ECR I-3585;
Case C-117/01 *KB v. National Health Service Pensions Agency, Secretary of State for Health* [2004] ECR I-541;
Case C-13/94 *P v. S* [1996] ECR I-2145.

b). Position taken by other jurisdictions

ECt.HR *Salgueiro da Silva Mouta v. Portugal* [1999] App no 33290/96;
ECt.HR *Kerner v. Austria* [2003] App no 40016/98;
ECt.HR *Fretté v. France* [2002] App no 36515/97;
ECt.HR *Grant v. UK* [2006] App no 32570/03.

c). Equality directive

Directive 2000/78/EC *Official Journal* L 303/16 of 27 November 2000.

DAY 3. SESSION 1B: WRAPPING UP: WHAT FUTURE FOR EUROPEAN CITIZENSHIP?

Additional reading list

- van Ballegooij, Wouter F.W. (ed.), *Europees Burgerschap*, The Hague: T.M.C. Asser Press, 2004;
- Becker, Michael A., 'Managing Diversity in the European Union: Inclusive European Citizenship and Third-Country Nationals', 7 *Yale Hum. Rts. and Dev. L.J.*, 2004, 132;
- Blumann, Claude, 'Citoyenneté européenne et droits fondamentaux en droit de l'Union européenne: Entre concurrence et complémentarité', in *Libertés, justice, tolérance: Mélanges en hommage au Doyen Gérard Cohen-Jonathan*, Brussels: Bruylant, 2004, 265;
- Boeles, P., 'Europese burgers en derdelanders: Wat betekent het verbod van discriminatie naar nationaliteit sinds Amsterdam?', *Sociaal-economische wetgeving*, no. 12, 2005, 502;
- Bosniak, Linda, 'Citizenship Denationalized', 7 *Ind. J. Global Legal Stud.*, 2000, 447;
- Constantinesco, Vlad, 'La cittadinanza dell'Unione: Una "vera" cittadinanza?', in Rossi, Lucia S. (ed.), *Il progetto di Trattato-Costituzione: Verso una nuova architettura dell'Unione Europea*, Milano: Giuffrè, 2004, 223;
- Davies, Gareth, 'Services, Citizenship and the Country of Origin Principle', *Mitchell Working Paper Series*, no. 2, 2007;
- Davies, Gareth, "'Any Place I Hang My Hat?" or: Residence is the New Nationality', 11 *Eur. L.J.* 1, 2005, 43;
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- de Groot, Gerard-René, 'Towards a European Nationality Law', 8 *Eur. J. Comp. L.*, 2004;
- Hall, Stephen, 'Determining the Scope *ratione personae* of European Citizenship: Customary International Law Prevails for Now', 28 *Legal Issues of Economic Integration* 3, 2001, 355;
- Jacobs, Francis G., 'Citizenship of the European Union – A Legal Analysis', 13 *Eur. L.J.*, 2007, 591;
- Jessurun d'Oliveira, Hans U., 'Nationaliteit en de Europese Unie', in *Ongebogen Recht: Opstellen aangeboden aan Prof. Dr. H. Meijers*, The Hague: Sdu Uitgevers, 1998, 71;
- Kochenov, Dimitry, 'Gay Rights in the EU: A Long Way Forward for the Union of 27', 3 *Croatian Yearbook of European Law and Policy*, 2007, 469;
- Kochenov, Dimitry, 'The European Citizenship Concept and Enlargement of the Union', 3 *Romanian J. Pol. Sci.*, 2003, 71;
- Kostakopoulou, Theodora, 'Ideas, Norms and European Citizenship: Explaining Institutional Change', 68 *Mod. L. Rev.* 2, 2005, 233;
- Kostakopoulou, Theodora, 'Nested "Old" and "New" Citizenships in the European Union: Bringing out the Complexity', 5 *Colum. J. Eur. L.*, 1999, 389;
- Marshall, T.H., *Citizenship and Social Class and Other Essays*, Cambridge: CUP, 1950;
- Nic Shuibhne, Niamh, 'Free Movement of Persons and the Wholly Internal Rule: Time to Move on?', 39 *Common Mrkt. L. Rev.*, 2002, 731;
- Lardy, Heather, 'Citizenship and the Right to Vote', 17 *Oxford J. Legal Stud.* 1, 1997, 75;
- O'Leary, Síofra, *The Evolving Concept of Community Citizenship: From Free Movement of Persons to Union Citizenship*, The Hague / London / Boston, Kluwer, 1996;
- Pérez Vera, Elisa, 'Citoyenneté de l'Union européenne, nationalité et condition des étrangers', in *Recueil des cours: Collected Courses of The Hague Academy of International Law*, The Hague / Boston / London: Martinus Nijhoff, 1996;
- Rubinstein, Kim and Adler, Daniel, 'International Citizenship: The Future of Nationality in a Globalized World', 7 *Ind. J. Global Legal Stud.*, 2000, 519, 522;
- Shaw, Jo, *The Transformation of Citizenship in the European Union: Electoral Rights and the Restructuring of Political Space*, Cambridge: CUP, 2007;
- Sitaropoulos, Nicholas, 'Freedom of Movement and the Right to a Nationality v. Ethnic Minorities: The Case of ex Article 19 of the Greek Nationality Code', 6 *Eur. J. Migration and L.*, 2004, 205;
- Sohoni, Deenesh, 'Unsuitable Suitors: Anti-Miscegenation Laws, Naturalisation Laws, and the Construction of Asian Identities', 41 *Law and Society Rev.*, 2007, 587;
- Timmermans, Christiaan, 'Lifting the Veil of Union Citizens' Rights', in Colneric, Ninon, Edward, David, Puissochet, Jean-Pierre and Ruiz-Jarabo Colomer, Dámaso (eds.), *Une communauté de droit: Festschrift für Gil Carlos Rodríguez Iglesias*, Berlin: BWV Berliner Wissenschafts-Verlag, 2003, 195;
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- Zincone, Giovanna and Ardovino, Simona, 'I diritti elettorali dei migranti nello spazio politico e giuridico europeo', 5 *Le Istituzioni del Federalismo*, 2004, 741.